

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHESTERFIELD COUNTY
Court of Common Pleas

C. Heath Ruffner, Special Referee

C.A. No. 2010-CP-13-0164

RECEIVED

OCT 27 2016

SC Court of Appeals

AMERICAN COMMUNITY BANK,
a division of Yadkin Valley Bank & Trust, Respondent,

vs.

MICHAEL R. BROWN; C. W. HORNE;
SHORTT AUCTION & REALTY CO., INC.;
BANK OF AMERICA, N.A.; and
JAGUAR PORTFOLIO, LLC, Defendants,

of whom MICHAEL R. BROWN is Appellant.

MOTION FOR EXTENSION OF TIME AND
RETURN TO MOTION TO DISMISS APPEAL

Pursuant to Rules 240(a), (e) and 263(b), S.C.A.C.R., the Appellant, by his counsel herein, moves for an extension of time to file, or the right to file outside time, his (included) Return to the Respondent's Motion to Dismiss the Appeal herein, on the grounds stated below:

1. By Motion dated and served October 13, 2016, the Appellant requested by Motion an extension of time in which to submit his Initial Brief and Designation of Matter, and served the same.
2. In response to such Motion, counsel for Appellant received the letter of this Court, a copy of which is attached hereto and incorporated herein, dated October 18, 2016, informing him that the said Motion would be held in abeyance pending disposition of the Respondent's Motion to Dismiss.

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3. The said letter of the Clerk of Court was received by counsel for the Appellant on October 20, 2016. As of that time, no copy of any Motion to Dismiss had been received by counsel for the Appellant.
4. In response to the said letter, on October 20, 2016 counsel for Appellant contacted the Clerk's Office and was directed to the "C-Track Public Access" link, from which he obtained a copy of the Motion to Dismiss.
5. The said Motion to Dismiss is premised solely upon the fact and result of the Appellant's former Appeal of the Honorable J. Michael Baxley's Order in the civil action above entered August 6, 2012, a copy of which is attached hereto and incorporated herein.
6. The Appellant acknowledges the said Order and its affirmation by the Appellate Courts. The said Order, however, specifically provides, in relevant part:

This case now consists of a mortgage foreclosure and a Truth in Lending Act claim on which a jury demand had been made. . . . Since there are not factual issues common to both the legal and equitable claims, the TILA claim does not have to be tried first. . . . Nothing herein limits Plaintiff from referring the foreclosure claim to a special referee under Rule 53(b) and 71(a), SCRCF.

[Order entered August 6, 2012, VII. Procedural Status, P. 10.]

7. At the Foreclosure hearing set by the Plaintiff, counsel for Appellant objected to the entry of a final order of foreclosure premised upon the clear language of Rule 71(a), S.C.R.C.P, which states in relevant part:

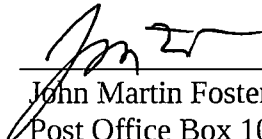
In foreclosure actions the judge or master shall compute the amounts due the plaintiff and any other claimants, which amounts when determined shall be the total debt due to each. The total debt shall as a minimum set forth clearly the principal due upon default, . . . any other relevant interest charged, any amounts due or to be credited on escrow items, . . . and the amount of allowable attorneys fees due and anticipated through conclusion of the action. . . . The judge or master may also establish the priority and compute the amounts due of any other liens when a determination of lien priorities appears necessary or desirable prior to a foreclosure sale.

8. The basis of this appeal is that the clear language of Rule 71, S.C.R.C.P. requires a determination of all indebtedness owed by or to the parties prior to the imposition of foreclosure. That basis, and the legal reasoning advanced on its behalf, are unaffected by the fact of the previous appeal.
9. Counsel for Appellant has been delayed since October 20, 2016 in making this Motion and Return by Court appearances and preparation for jury trial.
10. On the basis of the facts set out above, counsel for Appellant requests an extension of time in which to submit his included Return to the Motion to Dismiss Appeal.

The basis of this Motion is the within-cited Rules, the records of this appeal, and any attached affidavit or stipulation of the undersigned, which items are hereby incorporated in this Motion.

WHEREFORE, the Appellant herein moves this Court to be allowed an extension of time to file, or the right to file outside time, his included Return to the Motion to Dismiss Appeal as set out above, pursuant to Rule 240(a), (e) and 263(b), S.C.A.C.R.

October 25, 2016



John Martin Foster
Post Office Box 106
Rock Hill, South Carolina 29731
803 324-8100
Attorney for Appellant

Other Counsel of Record:



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

October 18, 2016

John Martin Foster, Esquire
PO Box 106
Rock Hill SC 29731-6106

Re: American Community Bank v. Michael Brown
Appellate Case No. 2016-001838

Dear Counsel:

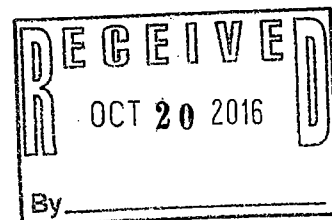
The Court received your motion for extension of time for serving and filing the appellant's initial brief and designation of matter on October 17, 2016. You are reminded that a motion to dismiss is currently pending in this matter. The motion to dismiss holds all filing deadlines in abeyance, pursuant to Rule 240 of the South Carolina Appellate Court Rules. Your motion is not necessary and no further action will be taken with regard to your request for extension.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: James W. Sheedy, Esquire
Susan Elizabeth Driscoll, Esquire



STATE OF SOUTH CAROLINA)
COUNTY OF CHESTERFIELD)

IN THE COURT OF COMMON PLEAS

American Community Bank, a division of Yorkin True Copy, Attest
Valley Bank & Trust,

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DEC 13 2012

Plaintiff,

Joyce S. Zeller

CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

vs.

SC Court of Appeals

Michael R. Brown; C. W. Horne; Shortt Auction
& Realty Co., Inc.; Bank of America, N.A.; and
Jaguar Portfolio, LLC,

C.A. No.: 10-CP-13164

FAVENS SELLERS
CLERK OF COURT
CHESTERFIELD COUNTY, SC

NOV 6 AM 11 45

Defendants.

**ORDER GRANTING SUMMARY JUDGMENT ON
BORROWER'S AFFIRMATIVE DEFENSES AND COUNTERCLAIMS**

This matter came before the Court on Plaintiff's motion for summary judgment against Defendant Brown (hereafter, "Borrower") on his affirmative defenses and counterclaims against Plaintiff. Both parties filed memoranda in support of their position. Present at the hearing for Plaintiff were attorneys James W. Sheedy and Susan E. Driscoll, and for Borrower, Martin A. Foster. Borrower was also present at the hearing. Attorney Harry R. Easterling, Jr. was present on behalf of Defendant C.W. Horne (Guarantor), but took no position on the Motion. Shortt Auction & Realty Co., Bank of America, N.A. and Jaguar Portfolio, LLC are all in default and did not appear at the hearing.

The evidence filed with the Court by Plaintiff relating to the Motion consisted of transcripts from the depositions of Michael R. Brown, William Clewis (a Senior Vice President of Plaintiff) and C.W. Horne; and letters from the South Carolina Department of Health and Environmental Control (SC DHEC) dated March 24, 1997 and January 8, 2010.

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DEC 17 2012

In addition to some of the same evidence submitted by Plaintiff, Borrower filed a 2007 Form 1098 issued to Borrower by Plaintiff; a commitment for title insurance issued to Plaintiff on December 21, 2000; a copy of an October 29, 2007 promissory note in the original amount of \$87,400 in the name of Borrower; an assignment of deposit account dated October 29, 2007; the mortgage given by Borrower to Plaintiff dated December 29, 2000, recorded January 2, 2001 in Book 346, at Page 431 in the Office of the Clerk of Court, Chesterfield County, South Carolina, against 106.85 acres along Hartsville-Ruby Road in Patrick, South Carolina (the "Subject Property")¹; and a disbursement request and authorization dated December 29, 2000 executed by Borrower in favor of Plaintiff.

I. Limited Consent to Requested Relief

In his pleading in response to the foreclosure complaint, Borrower alleged that at the time of the closing on the Note secured by the Mortgage, the subject property was environmentally contaminated and Plaintiff concealed that fact from Borrower. (Answer, Counterclaims and Crossclaim, pp. 3-4, 6-7, 9-13.) At the hearing on the Motion, Borrower's counsel conceded there was no evidence of environmental contamination of the subject property. Counsel informed the Court that Borrower would not oppose entry of summary judgment in favor of Plaintiff on the counterclaims for civil conspiracy and fraud (both actual and constructive), or on the affirmative defenses of failure to mitigate damages, equitable estoppel, unconscionability and breach of duty of good faith.

Because Plaintiff's motion for summary judgment as to the counterclaims of civil conspiracy and fraud (both actual and constructive) and the affirmative defenses of failure to mitigate damages, equitable estoppel, unconscionability and breach of duty of good faith is well-

¹ This property is indisputably a closed winery consisting of, among other things, a 63,400+/- square foot manufacturing warehouse space, and a 7,000+/- square foot building with concrete floors and 14' drive-in doors.

supported and there are no genuine issues of material fact as applied to the controlling law, in response to which Borrower has not offered any facts, law or argument to the contrary, the Court grants summary judgment against Borrower on those causes of action and affirmative defenses. That leaves Plaintiff's failure to satisfy a mortgage in accordance with S.C. Code Ann. §29-3-310 and alleged violation of the South Carolina Unfair Trade Practices Act as the remaining counterclaims², and it also leaves waiver (express and implied) as the remaining affirmative defense to be resolved by the Motion.

II. Factual Background

9/13
Borrower executed a promissory note in favor of Plaintiff that obligated Borrower to repay the principal amount of \$150,000 (Note). The Note was secured by a Mortgage granting Plaintiff a first lien against the Subject Property. Both the Note and the Mortgage were executed on December 29, 2000. The Note matured, which Borrower did not expressly deny in his Answer, Counterclaims and Crossclaim dated August 12, 2010 (the "Answer"), nor did his counsel contest at the hearing on the Motion. On February 23, 2010, Plaintiff sent a demand letter to Borrower, to which he did not respond. Plaintiff then filed this foreclosure action to enforce the terms of the Note secured by the Mortgage. The foreclosure seeks entry of judgment against Borrower, including a judicial sale of the subject property.

This Court previously entered an Order Deeming Applicable the C.J. Toal Administrative Order to this Foreclosure Action. In the briefing that preceded entry of the Order, Borrower said he was living on the subject property, with which Plaintiff did not disagree. The Order recites

² The Motion does not seek a ruling on Borrower's Truth-in-Lending (TILA) cause of action, so such cause of action is unaffected by the Court's ruling on the Motion before it.

that it was undisputed that the property is residential,³ and, therefore, the foreclosure intervention procedures were applicable to this case. Thus, this case has been stayed. Prior to the hearing on the Motion, Borrower received a Notice of Right to Foreclosure Intervention. Although Plaintiff and Borrower exchanged information about whether the Note secured by the Mortgage could be rehabilitated by Borrower making payments to amortize the loan, the parties were unable to accomplish a loan modification. Plaintiff has filed a certification with this Court, which operates to lift the stay.

III. Borrower's Dispute

For purposes of the Motion, according to counsel for Borrower, there are three facts set forth in his Answer, purportedly supported by his evidence, that he believes warrant denial of summary judgment on the counterclaims for failure to satisfy a mortgage and UTPA, and the affirmative defense of waiver (express and implied); to wit: i) the Note represents a consumer loan; ii) the extensions and modifications to the Note contain forged signatures; and iii) the 2007 Form 1098 issued by Plaintiff to Borrower is a representation that the Note had been paid in full.

IV. Findings of Fact

Based on the Motion, memoranda, evidence and the arguments of counsel given at the hearing, the Court hereby makes the following Findings of Fact dispositive of the Motion.

1. Borrower executed the Note in favor of Bank that obligated Borrower to repay the principal amount of \$150,000. (Depos. Tr. Brown, pp. 14-15.)
2. The Note was secured by the Mortgage signed by Borrower which granted Bank a first lien against the Subject Property. (Depos. Tr. Brown, pp. 18-19.)

³ In the Order, the Court did not rule on whether the loan evidenced by the Note secured by the Mortgage was a consumer or commercial transaction.

3. Both the Note and the Mortgage were executed by Borrower on December 29, 2000. (Depos. Tr. Brown pp. 14, 19.)
4. Borrower has not paid the principal amount owed under the matured Note upon demand by Plaintiff. (Depos. Tr. Brown, pp. 18, 40, 62-63, 83.)
5. Plaintiff has sued for the principal amount of the Note plus interest thereon, attorneys' fees, and costs accruing after the period in the demand letter expired. (Complaint, p.6, ¶23.) Plaintiff has not sued for amounts based on any extension or modification to the Note.
6. Plaintiff never informed Borrower it did not intend to collect the principal amount due and owing on the Note. (Depos. Tr. Brown, pp. 40-41; Depos. Tr. Clewis, pp. 80.)
7. In 2007, Plaintiff issued a Form 1098 Mortgage Interest Statement to Borrower that indicated receipt of \$87,500 in interest payments from Borrower. This Mortgage Interest Statement provides information to the Internal Revenue Service in connection with Borrower's deduction of his mortgage interest on his tax return.

V. Discussion

A. Failure to Satisfy the Mortgage

Under S.C. Code Ann. § 29-3-310 (Cum. Supp. 1999),

[a]ny holder of record of a mortgage who has *received full payment or satisfaction* . . . of his debts, damages, costs, and charges secured by mortgage of real estate shall, at the request by certified mail or other form of deliver with a proof of delivery of the mortgagor or his legal representative . . . within three months after . . . the request is made, enter satisfaction in the proper office on the mortgage which shall forever thereafter discharge and satisfy the mortgage.

S.C. Code Ann. § 29-3-310 requires actual payment of the note secured by the mortgage. *See Dykeman v. Wells Fargo Home Mortg., Inc.*, 381 S.C. 333, 673 S.E.2d 804 (Ct. App. 2009). For the statute to apply, the debt must be paid in full.

The evidence demonstrates clearly and without question that Borrower never paid the \$150,000 he owed to Bank. He admitted he never repaid the principal amount of \$150,000. (Depos. Tr. Brown, p. 18-19, 40, 62-63, 83-84.) His counsel argues that the "Payment" and "Balance" blocks on the 2007 Form 1098 show "Paid" and "-0-"; therefore, his client owes nothing. The 2007 Form 1098 is a Mortgage Interest Statement, and does not say anything about the principal due on the Note. The evidence is indisputable that the principal amount of the Note is still due and owing by Borrower. Because there is no evidence that Borrower paid the Note in full, Plaintiff has no obligation under S.C. Code Ann. § 29-3-310 to satisfy the Mortgage. Summary judgment is granted against Borrower on his counterclaim for failure to satisfy a mortgage.

B. SC UTPA

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On page eleven of his memorandum in opposition, Borrower detailed eight items, listed as "i" through "viii," as factual bases for alleging that Plaintiff violated the SC UTPA. Of these, the item referring to title insurance for an environmental condition was effectively withdrawn by Borrower when he admitted he could not prove there was an environmental condition on the Subject Property. Three additional items, that relate to whether the debt had been satisfied, have been resolved by this Court's ruling above that it is indisputable the principal amount of the Note is still due and owing by Borrower.

Left, then, are four factual bases to be considered. These will be addressed in the order in which they were raised by Borrower, and referred to as listed therein. As for item "i", Borrower has offered no evidence that Plaintiff has deliberately engaged in a pattern or practice of mislabeling consumer loans as commercial, or evidence that if Plaintiff mislabeled Borrower's loan, such mislabeling has the potential for repetition by Plaintiff in the future, as part of a

deliberate pattern of unfair or deceptive practices.⁴ Nor did counsel for Borrower make any argument at the hearing about any other similar loan transactions of Plaintiff. Without making any finding on whether the loan was consumer but treated as commercial, this Court denies item "i." as a factual basis for a UTPA claim because there is no evidence or argument on other loans by Plaintiff deliberately being mislabeled.

The same reasoning applies to item "ii." Borrower has offered no evidence that Plaintiff has deliberately engaged in a pattern or practice of not affording borrowers their right to choose counsel on South Carolina consumer loan transactions secured by real estate, or that the allegations in this case have the potential for repetition by Plaintiff in the future, as part of a deliberate pattern of unfair or deceptive practices. Nor did counsel for Borrower make any argument at the hearing about any other similar loan transactions of Plaintiff where Plaintiff deliberately did not afford borrowers their right to choose counsel on South Carolina consumer loan transactions secured by real estate. This Court denies item "ii." as a factual basis for a UTPA claim because there is no evidence or argument on other loans by Plaintiff where it deliberately denied borrowers their right to choose counsel.

On items "iv." and "v.," which pertain to allegations of forged extensions and modifications of the Note in question, assuming, *arguendo*, these allegations are true, such

⁴ Borrower did not produce any evidence "proving that the same kind of actions occurred in the past or [] showing that the procedures employed by [Plaintiff] create a potential for repetition of the deceptive practices." *Schnellmann v. Roettger*, 368 S.C. 17, 23, 627 S.E.2d 724, 746 (Ct. App. 2006). See also *Regions Bank v. College Ave. Development, L.L.C.*, 2010 WL 973480, *5 (D.S.C. 2010) (No UTPA cause of action for borrower where it "complained of acts only relating to the individual loan transaction involved in [that] case."). A "simple contract dispute between two parties to a commercial transaction" is not what "the SCUTPA was created to protect against." *Id.* "The act is not available to redress a private wrong where the public interest is unaffected." *Noack Enterprise, Inc. v. Country Corner Interiors of Hilton Head Island, Inc.*, 290 S.C. 475, 479, 351 S.E.2d 347, 350 (Ct. App. 1986). "An unfair or deceptive act or practice that affects only the parties to a trade or a commercial transaction is beyond the act's embrace." *Id.* Borrower is trying to use the SC UTPA to address a private grievance with Plaintiff. There is no evidence in the record of Plaintiff committing these same alleged acts in transactions with other parties, nor is there any evidence that tends to show Plaintiff will commit the alleged acts in any future transactions. As a result, there is no impact on the public interest as required under the SC UTPA.

forgeries extending the maturity date of the Note do not render unenforceable the original Note and Mortgage. Borrower admits he did not repay the original principal of the Note. Plaintiff is only suing for the original principal amount, plus interest accruing after demand was made upon Borrower on February 23, 2010. (Complaint, p. 6, ¶¶ 23-24; Depos. Tr. Clewis, pp. 71-72, 82-83.) Furthermore, even if Plaintiff did accept the alleged forgeries, there is no evidence that such acceptance damaged Borrower in any way. He borrowed \$150,000, which he has not repaid. Last, the forgeries are also a mere private grievance between Plaintiff and Borrower, so there is again no impact on the public interest as required by the SC UTPA. Thus, this Court denies items “iv.” and “v.” as factual bases for a UTPA claim.

C. Waiver

Borrower bases his affirmative defense of waiver⁵ on a 2007 Form 1098. The Form 1098 shows that \$87,400 in interest was received by Plaintiff. The Form is clearly labelled “Mortgage Interest Statement.” It makes no mention of payment of principal, nor does it reference how much remains due and owing on the Note.

In addition to the information contained on the Form 1098, Borrower admits he knew the Form 1098 was an interest statement for the Note, not a statement marking the Note paid in full. (Depos. Tr. Brown, pp. 39-41.) He also admits that he knew he had not paid Plaintiff \$87,500 in interest on the Note, nor had he paid any of the principal of \$150,000. (Depos. Tr. Brown, pp. 18, 40-41, 62-63, 83.) Borrower never received anything in writing from Plaintiff that if he failed to repay the \$150,000, Plaintiff would waive its right to foreclose on the Mortgage. (Depos. Tr. Brown, pp. 40-41.) Nothing in Plaintiff’s records indicate that it ever marked the Note paid in full. (Depos. Tr. Clewis, p. 74.) Borrower’s self-serving interpretation of the Form

⁵ Waiver is a voluntary and intentional abandonment or relinquishment of a known right.” *Murdock v. Murdock*, 338 S.C. 322, 333, 526 S.E.2d 241, 247 (Ct. App. 2009).

1098 does not create a genuine issue of material fact that prevents summary judgment from being entered on his affirmative defense of waiver.

VI. Conclusion

If a motion for summary judgment is supported as provided in the Rule, summary judgment will be granted, unless the adverse party presents evidence showing that there is a genuine issue of fact for trial. Rule 56(e), SCRCF. A nonmoving party has to demonstrate at least a scintilla of evidence to defeat a motion for summary judgment, where, as here, the burden is preponderance of the evidence. *Hancock v. Mid-South Management Co., Inc.*, 381 S.C. 326, 673 S.E.2d 801 (2009); and *Shirley's Iron Works, Inc. v. City of Union*, 2010 WL 530195 (S.C. Ct. App. 2010). The scintilla, however, must be of probative value. *Bass v. Gopal, Inc.*, 384 S.C. 238, 680 S.E.2d 917 (Ct.App. 2009); *Lanier Construction Co., Inc. v. Bailey & Yobs, Inc.*, 384 S.C. 275, 681 S.E.2d 909 (Ct.App. 2009); and, *Carolina Renewal, Inc. v. South Carolina Dept. Transp.*, 385 S.C. 550, 684 S.E.2d 779 (Ct.App. 2009). Where, as here, there is no showing of a genuine issue of material fact, the moving party is entitled to a judgment as a matter of law. Rule 56(c), SCRCF.

Borrower has not offered even a scintilla of probative evidence to support his counterclaims of failure to satisfy a mortgage and violation of the SC UTPA, nor has he set forth any evidence to support his affirmative defense of waiver. Instead, the evidence shows only that the Note and Mortgage were executed by Borrower, he failed to pay in accordance with the terms thereof, and Plaintiff elected to exercise its remedies. Because there is no evidence to support either the counterclaims of failure to satisfy a mortgage and violation of the SC UTPA or the affirmative defense of waiver, summary judgment is granted as to these issues in favor of Plaintiff.

VII. Procedural Status

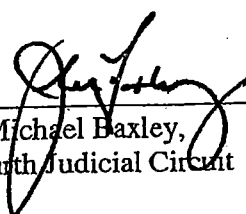
This case now consists of a mortgage foreclosure and a Truth in Lending Act claim on which a jury demand has been made. The Court has not decided as a part of this decision whether the TILA claim is compulsory to which a jury trial right exists, or permissive in which event the right to trial by jury was waived when such claim was lodged in this foreclosure proceeding. *Wells Fargo Bank, N.A. v. Smith et al.*, 2012 WL 2125834 (S.C. Ct. App. June 13, 2012). Because the complaint is equitable and the counterclaim may be compulsory (until decided otherwise upon subsequent motion), the proper procedure is for separate trials of the legal and equitable claims, pursuant to Rule 42(b), SCRPC. Since there are not factual issues common to both the equitable and legal claims, the TILA claim does not have to be tried first. *C&S Real Estate Services, Inc. v. Massengale et al.*, 290 S.C. 299, 302, 350 S.E.2d 191, 193 (1986). Nothing herein limits Plaintiff from referring the foreclosure claim to a special referee under Rule 53(b) and 71(a), SCRPC.

NOW, THEREFORE, it is hereby

ORDERED that the motion of Plaintiff seeking summary judgment in its favor on the counterclaims (except for TILA) and the affirmative defenses is granted.

IT IS SO ORDERED.

July 27, 2012



J. Michael Baxley,
Fourth Judicial Circuit

FORM 4

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHESTERFIELD)

IN THE COURT OF COMMON PLEAS
FOURTH JUDICIAL CIRCUIT
C.A. NO.: 2010-CP-13-164

American Community Bank, a division)
of Yadkin Valley Bank & Trust)
Plaintiff,)

v.)

Michael R. Brown; C.W. Horne; Shortt)
Auction & Realty Co., Inc.; Bank of)
America, N.A.; and Jaguar Portfolio, LLC,)
Defendants.)

ORDER DEEMING APPLICABLE THE)
C. J. TOAL ADMINISTRATIVE ORDER)
TO THIS FORECLOSURE ACTION)
(Granting Stay Until Compliance)

CHESTERFIELD)
S.C.)
2011 AUG 29)
9 11 18)

The Complaint in this matter sets forth a cause of action against Defendants for an entry of judgment, including foreclosure, on a promissory note secured by a mortgage against Defendants' property. This case was filed on May 4, 2010. Defendant Brown resides on the mortgaged property. At issue before the Court is whether South Carolina Supreme Court Order No. 2011-05-02-01, dated May 2, 2011, regarding mortgage foreclosure actions and imposing a Stay in such proceedings until the Plaintiff undertakes certain foreclosure intervention measures, applies to the mortgage given by Defendant Brown to Plaintiff American Community Bank. Both parties were given an opportunity to brief the Court on this issue.

Jas

After review, the Court finds it is undisputed that the property at issue in this matter is residential property. Moreover, this case was pending on May 9, 2010, a trigger date for applicability of the Administrative Order. This Court further notes that the Administrative Order is to be liberally construed and applied for reasons of uniformity, judicial economy, and assurance of the mandated protections for distressed debtors and their rights under both state and federal law. Therefore, this Court finds that Administrative Order No. 2011-05-02-01 applies to this case, and Plaintiffs are directed to comply therewith. **This action shall be Stayed until Plaintiff provides proof of compliance with the foreclosure intervention requirements outlined in the Administrative Order.**

IT IS SO ORDERED.



J. Michael Baxley,
Presiding Judge

Dated at Hartsville, South Carolina, this ____ day of August, 2011

This Judgment was entered on the ____ day of August 2011, and a copy mailed first class to attorneys of record as follows:

Attorney for Plaintiff

James W. Sheedy, Esq.
Driscoll Sheedy, P.A.
11520 N. Community House Road
Suite 200
Charlotte, NC 28277

Attorneys for the Defendant

John Martin Foster, Esq.
Post Office Box 106
Rock Hill, SC 29731

Harry R. Easterling, Jr., Esquire
Post Office Box 655
Bennettsville, SC 29512

CLERK OF COURT

STATE OF SOUTH CAROLINA
COUNTY OF CHESTERFIELD
IN THE COURT OF COMMON PLEAS

JUDGMENT IN CIVIL CASE

CASE NO.: 2010-CP-13-164

American Community Bank, a division of Yadkin

Michael R. Brown; C.W. Horne; Shortt Auction

Valley Bank & Trust

& Realty Co., Inc.; Bank of America, N.A.; and
Jaguar Portfolio, LLC

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: John Martin Foster, Esq.

Attorney for : Plaintiff Defendant
or
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRCP; Rule 41(a), SCRCP (Vol. Nonsuit); Rule 43(k), SCRCP (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRCP; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

2012 NOV 7 AM 9 27
CLERK OF COURT
L. S. HARRIS
CLERK OF COURT

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

Defendant Brown's Motion for Reconsideration is Denied. See Page 2 for additional information.

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk :

John M. Foster
A True Copy, Attest

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A	N/A	N/A
N/A	N/A	N/A
N/A	N/A	N/A

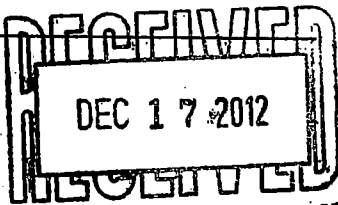
If applicable, describe the property, including tax map information and address, referenced in the order:
N/A

DEC 1 3 2012

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

John M. Foster



2121
Judge Code

11/5/12
Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of November, 2012 and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of November, 2012 to attorneys of record or to parties (when appearing pro se) as follows:

James W. Sheedy
Susan E. Driscoll
11520 N. Community House Rd., Ste 200, Charlotte,
NC 28277
ATTORNEY(S) FOR THE PLAINTIFF(S)

John Martin Foster
P.O. Box 106, Rock Hill, SC 29731
Harry R. Easterling, Jr.
P.O. Drawer 655, Bennettsville, SC 29512
ATTORNEY(S) FOR THE DEFENDANT(S)
The Honorable Faye Sellers
CLERK OF COURT, Attest

Faye S. Sellers

CLERK OF COURT, C.P. & G.S.
CHESTERFIELD COUNTY, SC

2012 NOV 7 AM 9:27
FAYE L. SELLERS
CLERK OF COURT
CHESTERFIELD COUNTY, SC

Court Reporter: N/A

ADDITIONAL INFORMATION REGARDING DECISION REFERENCED ON PAGE ONE:

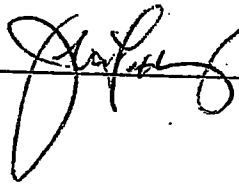
By Order dated July 27, 2012, this Court granted summary judgment in favor of Plaintiff on Defendant Brown's counterclaims for civil conspiracy and fraud (both actual and constructive), as well as Defendant Brown's affirmative defenses of failure to mitigate damages, equitable estoppel, unconscionability, and breach of duty of good faith. At the hearing on Plaintiff's Motion for Summary Judgment, counsel for Defendant Brown indicated that he would not oppose entry of summary judgment in favor of Plaintiff on those counterclaims and affirmative defenses, and further the Court found that summary judgment was appropriate as to those claims because there existed no genuine issues of material fact as to those counterclaims and affirmative defenses. In addition, and through the same Order, the Court granted summary judgment in favor of the Plaintiff on Defendant Brown's counterclaims for (1) Plaintiff's failure to satisfy a mortgage in accordance with S.C. Code Ann. § 29-3-310 (1976) and (2) an alleged violation of the South Carolina Unfair Trade Practices Act ("SCUTPA"). The Court also granted summary judgment in favor of the Plaintiff on Defendant Brown's affirmative defense of waiver.

Defendant Brown, through his counsel, has now filed a Motion to Reconsider pursuant to SCRCP 59(e), claiming the Court erred in granting summary judgment in favor of the Plaintiff on two of Defendant Brown's counterclaims: (1) the alleged violation of SCUTPA; and (2) a Truth-in-Lending Act ("TILA") claim.

The Court's Order, dated July 27, 2012, did not rule on Defendant Brown's TILA counterclaim. The Court directs counsel's attention to footnote two, page 3 of the Court's Order, which states that "[t]he Motion [Plaintiff's Motion for Summary Judgment] does not seek a ruling on Borrower's Truth-in-Lending (TILA) cause of action, so such cause of action is unaffected by the Court's ruling on the Motion before it." Thus, any consideration of this claim in Defendant Brown's Motion to Reconsider would be inappropriate, and such claim is unaffected here as well. With regard to the SCUTPA, Defendant Brown claims that summary judgment was inappropriate as there was a material issue of fact as to whether there was a forged extension or modification of the note in question - one of several factual bases presented to the Court to support a SCUTPA claim. The Court disagrees; regardless of whether the allegations of forgery are true, the original Note and Mortgage are not deemed unenforceable as a result of the alleged forgeries extending the maturity date of the Note.

Therefore, for the above stated reasons, Defendant Brown's Motion to Reconsider is DENIED.

Circuit Court Judge



2121
Judge Code

11/5/12
Date

2012 NOV 7 AM 9 27
FAYE L. SHELTERS
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHESTERFIELD COUNTY
Court of Common Pleas

C. Heath Ruffner, Special Referee

C.A. No. 2010-CP-13-0164

RECEIVED

OCT 27 2016

SC Court of Appeals

AMERICAN COMMUNITY BANK,
a division of Yadkin Valley Bank & Trust, Respondent,

vs.

MICHAEL R. BROWN; C. W. HORNE;
SHORTT AUCTION & REALTY CO., INC.;
BANK OF AMERICA, N.A.; and
JAGUAR PORTFOLIO, LLC, Defendants,

of whom MICHAEL R. BROWN is Appellant.

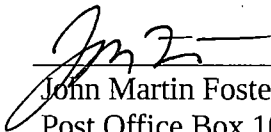
PROOF OF SERVICE

I certify that I have served the Motion for Extension to file the included Return to Motion to Dismiss Appeal dated October 25, 2016, on the following counsel or persons of record:

cc: James W. Sheedy
Susan E. Driscoll
Driscoll Sheedy, P.A.
Attorneys for American Community Bank
11520 North Community House Road, Suite 200
Charlotte, North Carolina 28277

by depositing the same with the United States mail, with sufficient first class postage attached, properly addressed to the clerk of the Court, and with a copy also directed to the respective last known address(es) of those attorney(s) and/or persons set out above, pursuant to Rule 262, S.C.A.C.R.

October 25, 2016


John Martin Foster
Post Office Box 106
Rock Hill, S. C. 29731-6106
803 324-8100
Attorney for Appellant

JOHN MARTIN FOSTER

Attorney at law

The Guardian Building	PO Box 106	803 324 8100
223 East Main Street Suite 520	Rock Hill SC	803 324 8109 Fax
Rock Hill South Carolina 29730	29731-6106	jmfoster@comporium.net

October 25, 2016

The Honorable Jenny Abbott Kitchings
Clerk of the South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

RECEIVED

OCT 27 2016

SC Court of Appeals

Re: American Community Bank, Respondent
v. Michael R. Brown, Appellant
Appellate Case No. 2016-001838

Dear Ms. Kitchings:

In accordance with Rules 240(a), (e) and 263(6), S.C.A.C.R., enclosed herewith please find the original and seven (7) copies of the Appellant's Motion for Extension to file, or to File Outside Time, his Return to the Respondent's Motion to Dismiss, together with the Certificate of Service for the same in the above referenced case.

Your has informed me that the check submitted for our last Motion fee of \$25.00 can be applied to this matter.

By copy of this letter, I am serving the attorney for the Respondents with copies of the said Motion, as evidenced by the Certificate of Service.

Please return the extra conformed copy to my office in the enclosed self-addressed, stamped envelope. As always, thank you, and your staff, for your assistance in these matters.

Sincerely yours,


John Martin Foster

jmf/
enclosures

cc: James W. Sheedy
Susan E. Driscoll
Driscoll Sheedy, P.A.
Attorneys for American Community Bank
11520 North Community House Road, Suite 200
Charlotte, North Carolina 28277

RECEIVED
OCT 27 2016
SC Court of Appeals

John Martin Foster Attorney

223 East Main St Suite 520

Post Office Box 106

Rock Hill SC 29731-6106

TO:

The Honorable Jenny Abbott Kitchings
Clerk of the South Carolina Court of Appeals
1015 Sumter Street
Post Office Box 11629
Columbia, S.C. 29211